

## Consumer Taxes

TVQ. 162-1                      **Collection of the Fees for the Publication of Rights in the Register of Personal and Movable Real Rights of the Ministère de la Justice and the Consultation Fees in Respect of the Sale or Long-Term Lease of a Road Vehicle**

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Reference(s):                      *An Act respecting the Québec sales tax (R.S.Q., c. T-0.1), section 162*

This bulletin discusses the application of the *Act respecting the Québec sales tax* (the “Act”) with respect to the fees for the publication of rights in the register of personal and movable real rights (“RPMRR”) of the Ministère de la Justice and the fees for consulting the RPMRR in respect of the sale or long-term lease of a road vehicle.

### GENERAL CONSIDERATIONS

1. Bill 181 (1998, chapter 5) entitled “*An Act to amend the Civil Code and other legislative provisions as regards the publication of personal and movable real rights and the constitution of movable hypothecs without delivery*” was assented to on April 16, 1998.
2. Under the provisions of that legal text, in order to have effect against third persons, the creditors of road vehicles must register in the RPMRR, instalment sales contracts, long-term leases and other rights. In this respect, the pertinent provisions came into force on September 17, 1999. The result of this registration is that if a purchaser or lessee does not fulfil his obligations, the creditor who registered the right may repossess the road vehicle with preference over the other creditors.
3. At the time of financing, automobile dealers are called upon to act on behalf of financial institutions, independent rental firms and, as part of the financing or lease contracts to be assigned to those financial institutions or firms, they are called upon to collect from the recipients the fees for the publication of rights in the RPMRR.
4. In certain cases, the financial or banking institutions or the credit corporations affiliated with the manufacturers ask their mandatary to collect fees that are greater than the cost set by the Ministère de la Justice in order to recover the amounts they pay to an institution or business that takes charge of the registration of the rights. Thus, an additional amount (administration charges) is added to the fees fixed by the Ministère de la Justice.
5. In other situations, in order to acquire the road vehicle, the recipient obtains direct financing from a financial institution by means of a personal loan or a car loan. As part of the financing contract,

the financial institution will collect from the recipient the fees for the publication of rights in the RPMRR.

6. Moreover, before acquiring a used road vehicle from an individual, it is in the interest of the automobile dealer to know if there is a right on the vehicle. That information may quickly be found by consulting the RPMRR. The automobile dealer will invoice the individual for the consultation fees (with or without administration charges).

## **APPLICATION OF THE ACT**

7. Paragraph 1 of section 162 of the Act exempts, among others, a supply made by a government of a service of registering any property or filing any document in a property registration system.

8. Subparagraph a of paragraph 5 of section 162 of the Act exempts, in particular, a supply of a service made by a government of providing information, or a certificate or other document, in respect of the title to, or any right in, property.

9. Under paragraph 7 of the definition of “financial service” in section 1 of the Act, a financial service means the making of any advance, the granting of any credit or the lending of money.

10. Under paragraph 1 of section 198 of the Act, a supply of a financial service is a zero-rated supply.

## **REGISTRATION OF A RIGHT IN THE RPMRR**

### **A. Fees Paid to the RPMRR for the Registration of Such a Right**

11. The fees paid by the financial institution or the rental firm to the RPMRR for the registration of such a right constitute consideration for an exempt supply under paragraph 1 of section 162 of the Act.

### **B. Fees Paid by the Financial Institution or the Rental Firm to a Third Person for the Registration of such a Right - The Third Person Acts as Mandatary for the Financial Institution or Rental Firm**

12. In certain cases, the financial institution or rental firm employs the services of a subcontractor who will have the mandate of registering a right in the RPMRR on behalf of the institution or firm. When the subcontractor pays the fees for registering a right in the RPMRR, this constitutes an exempt supply under paragraph 1 of section 162 of the Act. When the subcontractor collects the registration fees from the financial institution or the rental firm, these fees remain exempt. The charges billed by the subcontractor for his services, though, are taxable.

13. If the subcontractor bills the financial institution or the rental firm for a total amount though, that includes the fees for registering the right and the service charges, then that total amount is taxable.

### **C. Fees Paid to the Automobile Dealer by the Recipient or Lessee of a Road Vehicle for the Registration of such a Right**

14. The fees paid by the recipient of a road vehicle to an automobile dealer as part of an instalment sale with respect to the rights to register this sale in the RPMRR (whether administration charges for registration are included, or not) are fees incurred in the course of a supply of a financial service referred to in paragraph 7 of the definition of the expression “financial service” in section 1 of the Act; i.e. the expression of any advance, the granting of any credit or the lending of money. Consequently, these fees are part of the consideration for the supply of this financial service. That supply is zero-rated, to the extent that the fees may be distinctly identified on the contract.

15. The RPMRR registration fees paid by the lessee as part of a long-term lease (whether or not they include administration charges) are subject to the QST, just as is the taxable supply of a road vehicle by way of lease.

### **D. Fees Paid by the Recipient of a Road Vehicle Directly to the Financial Institution for the Registration of Such a Right as Part of a Financing Contract**

16. In some situations, the recipient obtains financing directly from a financial institution for the purpose of acquiring the road vehicle, for example through a personal loan or a car loan. In these circumstances, the fees paid under the financing contract by the recipient of a road vehicle directly to the financial institution as RPMRR registration rights (whether or not this includes registration-related administration charges) are fees incurred as part of the supply of a financial service referred to in paragraph 7 of the definition of the expression “financial service” in section 1 of the Act, i.e. the making of any advance, the granting of any credit or the lending of money. Consequently, these fees are part of the consideration for the supply of this financial service and that supply is zero-rated, provided that the fees may be distinctly identified on the contract.

### **FEES FOR CONSULTING THE RPMRR**

17. The consultation fees invoiced to the automobile dealer by the RPMRR for verifying the presence or absence of a right on the road vehicle he accepts in an exchange constitute consideration for an exempt supply under subparagraph a of paragraph 5 of section 162 of the Act.

18. However, when the automobile dealer collects these consultation fees (with or without administration charges) from the individual, these fees are taxable.

19. This bulletin has effect from September 17, 1999.